A

CRITICAL INQUIRY

INTO THE

INTERNAL CIVIL POLICY

OF THE

Province of Lower Canada,

IN RELATION TO SOME OF ITS STATUTE LAWS, AND SOME OF ITS JUDICIAL PRACTICES, WITH SOME REMARKS ON ITS EXTERNAL RELATIONS,

IN A SERIES OF LETTERS,

ADDRESSED TO THE REPRESENTATIVES OF THE COUNTIES OF SHEFFORD AND MISSISQUOI,

By an Elector of Representatives in said Counties.

TO WHICH IS ADDED,

AN ADDRESS TO THE PEOPLE OF SAID PROVINCE

ON THE IMPORTANCE OF ELEMENTARY EDUCATION, AND THE DESTRUCTIVE EFFECTS OF DISTILLED SPIRITS ON THE HEALTH, MORAL AND RELIGIOUS CHARACTER AND TEMPORAL PROSPERITY OF MANY OF ITS INHABITANTS.

By the same Author.

the Author Home is Elkanah Dalton Esq.

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PREFACE.

The author of these pages, having resided a long time in Canada, has been led to view many of its civil Institutions, as being not quite so well calculated to promote the welfare and convenience of the population as they might have been: and though he does not consider himself so well qualified to suggest improvements as many others, yet he hopes that he may be able, in the following inquiry, to convince his readers that some very beneficial improvements are practicable, and ought to be made. He has always had a reluctance to obtrude his sentiments on the public, and, on that account, has hitherto waited, in hopes that the Legislature would have taken up some of the causes of his complaint; now, when inasmuch as representatives have been chosen and sent from the Eastern Townships, under an act passed in the last session of the Provincial Parliament, and as the subjects of his inquiry have many of them an exclusive application to the condition of the Townships, the present, if ever, appears to the author a proper time for offering his opinions. The author, in justice to himself, does not presume to imagine that his sentiments have the merit of being either new or extraordinary, or that they contain any special ingredients to recommend them, except their present application to the circumstances of the country, and even of this he is not sure of the concurrence of public opinion.

He would further remark that he never had the ambition of becoming a scribbler, nor a mark for malignant criticism to vent its spleen. And should he be so unfortunate as to incur the displeasure of those who delight to dip their pens in gall, for the purpose of wounding the feelings of an author, he will most assuredly disappoint them of their reward, as he is perfectly satisfied with the correctness of his own motives, and will not be disappointed should his sentiments not meet with general approbation. Being *incognito*, the public cannot accuse him of writing for applause, nor of mercenary views, as he is not vain enough to look for any profit from his production. If his pamphlet therefore does not produce any practical benefit to his fellow subjects, his sole object will have been lost, as well as the few scattered portions of time, which the author has snatched from the avocations of a busy life, to put his thoughts in this shape, and the reader will lose the time spent in perusing them, which he flatters himself may be allowed to strike an even balance between them. Should any one be inquisitive to learn who has thus ventured to publish his observations on subjects that are confessedly very important, the author would beg leave to remark that it is little of consequence in his estimation whether he be thought a D. D., LL. D., or an obscure individual; as the sentiments and reasoning speak for themselves, and must be of equal weight, from whatever source they may have been derived.

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LETTER I.

GENTLEMEN:

As an elector in the Counties of Shefford and Missisquoi, and of course one of your constituents, I am induced to offer you my sentiments on the internal, civil policy of the Province. Residing in one of these Counties, and an elector in both, it cannot surely be deemed improper that I should take the liberty of addressing the public through you. Not doubting your capacity, or inclination, to make such movements in the House of Assembly, as may appear necessary for the interest of the country, permit me to observe, that experience has frequently verified the truth of the maxim, that, 'in the multitude of counsellors there is safety," and that if the suggestions, contained in the following Letters, should be of any service to you, or the country, I shall consider myself well rewarded.

As I have been obliged to put my thoughts on paper, at short intervals, I have not attempted to preserve any particular order; but I believe that the following nine maxims, all of which are founded in reason and truth, and are well supported, illustrated and applied by many of the best authors, will support the whole of my work.

1*st*. In every civil government, man surrenders his natural rights, or a great portion of them, for protection and security to his person and property. It is therefore of the highest importance that his civil rights, as a citizen should be well secured; and whether this be done well or ill, fully or partially, forms the distinction between a good and bad government.

"But though society had not its formal beginning from any convention "of individuals, actuated by their wants and their fears; yet, it is the sense "of their weakness and imperfection that keeps mankind together; that "demonstates the necessity of this union: and that therefore is the solid "and rational foundation, as well as the cement of civil society; and this "is what we mean by the original contract of society; which, though per- "haps in no instance it has been formally expressed at the first institution "of a state, yet in nature and reason must always be understood a nd im- "plied, in the very act of associating together: namely, that the whole "should protect all its parts, and that every part should pay obedience to "the will of the whole, or in other words that the community should guard "the rights, of each individual member, and that (in return for this pro- "tection) each individual should submit to the Laws of the community; "without which submission of all it was impossible that protection could "be certainly extended to any."—*Blackstone's Commentaries, page* 47.

2*d*. That in all free governments, it is of the first and highest importance that knowledge and information be diffused among the people at large, which cannot be done effectually without the encouragement and countenance of government; therefore every aid that the means of government can afford, ought resonably to be expected for improving the minds and morals of the people by a general diffusion of knowledge and religion.

3*d*. That the Laws be promptly and judiciously executed, and justice administered without delay or partiality, and with as little expense as the nature of circumstances can possibly admit, that all clases may obtain and secure their just rights, the poor as well as the rich.

4*th*. That the statute Laws of the Land be properly and sufficiently diffused among the people that all may know them, and none be left under the necessity of pleading ignorance.

"It is likewise "a rule prescribed" because a bare resolution confined "in the breast of the Legislature, without manifesting itself by some external "sign, can never be properly a law, it is requisite that this resolution be no- "tified to the people who are to obey it. But the manner in which this "notification is to be made is matter of very great indifference: it may be "notified by universal tradition and long practice, which supposes a pre- "vious publication, as is the case in the common Law of England; it may be "done *viva voce*, by officers appointed for that purpose as is done with re- "gard to proclamations, and such acts of parliament as are appointed to be "read in churches and other assemblies; it may lastly be notified by writing, "printing or the like, which is the general course taken with all our acts "of parliament; yet whatever way is made use of, it is incumbent on the "promulgators to do it in the most public and perspicous manner; not like "Calegula who (according to Diocessius) wrote his Laws in a very small "character, and hung them upon high Pillars the more effectally to ensnare "the people."—*Blackstone's Commentaries, page* 45.

5*th.* That economy in public expenditure is as necessary in a government as in private or individual life. Economy will be easy whether in private life, or with the government, if good sense and judgment be exercised and will always leave room to extend our views in proportion to our means; whereas retrenchment, when necessity renders it imperious, must always become hard; and national debts, as in individual cases, are dangerous.

6*th.* That national wealth and prosperity depend on the greater or less proportion of the people that are engaged in productive labor and employments, as husbandmen, merchants, mechanics, factors, and all other laborers by sea and by land. The support of all others deducts from national wealth, and though necessary under all civil governments, the unproductive classes should be as few as will answer the national purposes.

"The annual Labour of every nation is the fund which originally sup- "plies it with all the necessaries and conveniences of Life which it annual- "ly consumes, and which consist always in the immediate produce of that "Labour, or in what is purchased with that produce from other nations.

"According therefore, as this produce, or what is purchased with it, "bears a greater or smaller proportion to the number of those who are to "consume it, the nation will be better or worse supplied with all the ne- "cessaries and conveniences for which it has occasion.

"But this proportion must be regulated by two different circumstances; "first, by the skill, dexterity and judgment with which its Labour is gener- "ally applied; and secondly, by the number of those who are employed "in useful Labor, and that of those who are not so employed, whatever "be the soil, climate or extent of territory of any particular territory of any "particular nation, the abundance or scantiness of its annual supply must, "in that particular situation, depend on those two circumstances."

Smith's Wealth of Nations, page 1st.

7*th.* That the peculiar local advantages of a nation, with respect to agriculture, trade and navigation, ought to be well understood by its government; and if any, or all of them stand in need, or be susceptible, of improvement, that improvement ought to be promoted with a liberal hand.—For whatever increases the employment of the population, increases the productions, and consequently, the wealth of the nation.

8*th.* That in well regulated governments every exertion ought, and will

be made for the improvement of the internal communication by means of roads, canals, and bridges, according as the exigencies of the country, from time to time require, and its means allow, because the smaller the expense attending the transporation of the produce of any Country, from its interior to its market places, the greater will be the nett profit of the produce.

9th. All taxes, in the nature of direct taxes, ought to be levied on property equally or in proportion to the value of property in possession of each individual, except it be a tax on Faculty, in which case it should be in proportion to the profits arising from the exercise of that Faculty.

LETTER II.

GENTLEMEN :

You are, by the suffrages of the electors of your respective counties, promoted to situations highly respectable to yourselves, and of great responsibility, as relating to your connection with your constituents. I consider the present crisis,that of giving the townships an equal representation in Parliament, a very important epoch in our history. Until the present time we have been destitute of any actual representation, and, on that account, it was not to be expected that there could have been such knowledge of our circumstances and wants, existing among the members of that Honorable House, or that interest felt for our concerns, as could have led to many local improvements, in our section of the Province. That your situation, as members of Parliament, is delicate, I readily admit, because you are the first that have been called to represent a neglected portion of the country,and because it must be presumed that the most of the Eastern Delegation have but little practical acquaintance with parliamentary proceedings. Much has been said, and many believe, that a hostile feeling has been cherished on the part of those members who represent our fellow subjects of French extraction, which has, and will operate against the prosperity of the English settlements. In times past, there has been a collision of sentiment between the Executive Government and the House of Assembly, on some very important points, which had a strong tendency, not only to form, but to continue, two national parties, French and English; but that any considerable number of the members of our Provincial Parliament had ever any intentions, but such as were calculated, in their opinion, to promote the general welfare of every part of this Province, I do not believe. Every representative has not only to legislate for his own county, but to contribute his share to the whole Province, and any pitiful or contracted views of policy, calculated on mere selfish, local or sectional prejudices and interests, ought to be considered by him as beneath his character. I therefore, flatter myself that nothing will hereafter be required, but to pursue an industrious inquiry respecting the various exigencies and wants of this extensive Province, in order to apply prompt and effectual remedies. It is in this friendly confidence that I take the liberty of offering to you my sentiments, hoping that, in some small degree, I may contribute towards so desirable an object.

After the experience of a long residence in the Eastern Townships,I feel myself warranted in saying, that we have hitherto laboured under many dis-

advantages which the present state of the Laws are not so well calculated to remove as they might have been. I will first call your attention to the Courts established for the trial of small causes in the country Parishes.—These Courts are intended, and no doubt have been of considerable use, to facilitate the collection of small debts; but the jurisdiction allowed them is too limited to be of material service to the country. £4 : 3 : 4 of a certain special description of debt may be collected in these Courts, but no action of *Trover* or *Trespass* can be brought before them, and many actions of debt of a particular character are excluded. From the complexion of the Act that establishes these Courts, it is very evident that the framers of it were under a full belief, that, in many instances, it would be executed by persons far from being acquainted with legal decisions, and probably they were but too correct in that opinion.

As the case now stands, the Townships are mostly situated at, from sixty to upwards of one hundred miles from Courts that are competent to administer justice in most cases requiring it. Under these circumstances it must be obvious at least, when the extent and unimproved state of the roads, in many sections of the Country, and frequent Ferrys to cross, are considered, that some further provisions, in regard to the administration of justice, are extremely necessary. The expense of collecting a debt of £5:0:0, in many of the Townships, amounts under the present system to four, five, and even six pounds, when no *defence* is made; and a controversy, on a subject of no more value than perhaps forty shillings, frequently leads the parties into the expense of twenty, thirty, or forty pounds; and though I would not say that such conduct is to the honor of the parties, yet it is a fact that such cases frequently occur.

It will be said that a portion of the Townships is now benefitted by the erection of the District of St. Francis, but the remote parts of that District are at a great distance from the Court. Under these circumstances, it cannot reasonably be doubted that some remedy ought to be applied. An inquiry, therefore, at once, presents itself, what that remedy should be? I would answer and propose as a temporary relief, until the public mind gets settled upon some plan of improving the whole system of the Judiciary, that a Circuit Court, to have jurisdiction and cognizance of all causes to the amount of fifteen pounds; Notes of hand, and all other special demands, to the amount of twenty-five or thirty pounds, to sit in each county, which is remote from the district, every three months, for the accommodation of all such counties, and this as often as necessary, during a part of every session, be constituted a Court of Quarter Session of the Peace, in connection with some of the neighboring Magistrates, for the purpose of trying all matters of inferior crime, proper to be tried by a Court of Quarter Session, especially cases on bail—to grant tavern and shop licenses—to homologate the establishment of Roads, and, in short, all the usual business of a Court of Quarter Session. Thus a single qualified Judge, with the assistance of the County Magistrates, would save heavy expenses to the contending parties, and do the business more expeditiously, inasmuch as the parties and witnesses would be near the Court. I would also hint, that a clause might be inserted in the act, that any person choosing still to bring his action before the Court of King's Bench, should recover no more cost, than might have been recovered before the Circuit or County Court, having jurisdiction of the same cause.

I will conclude this Letter by observing, what is well known, that it is no small grievance, felt by many in the District of Montreal in particular, that tavern and shop licences are granted at the Quarter Sessions in the month of April, when the travelling and crossing the Rivers are attended with great trouble, danger and expense.

I am, Gentlemen, &c. &c.

LETTER III.

GENTLEMEN:

I shall next mention the necessity there is of improving the method of laying out, and establishing roads in the Townships. The Grand Voyers reside at a very great distance from most places which they have to visit. They cannot undertake such journies as the performance of their duties require, without adequate remuneration; and that remuneration must come from the individuals for whom the Road is to be established, and by whom the Road is to be made. The expense incurred in this way, and in homologating the Process Verbal may justly therefore be considered, if not the greatest obstacle, a very great one at least, to the making and improvement of Roads in the Townships. For the expense of laying out, and establishing the smallest piece of Road, cannot be less in most cases, than from thirty to fifty dollars, and sometimes more, which must all be paid in cash. To be relieved from the manifest hardship of this system (for there is no complaint against the worthy gentleman that exercises these functions in the District of Montreal) I would suggest that the Road Law should be so altered that, instead of one Grand Vayer for such an extensive territory as the District of Montreal, there shall be appointed in every Township, containing twenty families, and upwards, a Committee of three intelligent men, residing in that township for which they shall be appointed, with full powers to lay out all roads within the same; to appoint and commission surveyors of Roads, to act under them, and in short, to perform in their own township, all the functions that are now exercised by the present Grand Voyer of the great districts. This Road Committee might be elected by the Landholders of the Township, from among their own number, and commissioned or licensed to act as such in any way that the Legislature would deem proper. The Process Verbals of all such Road Committees should be homologated before the County or Circuit Courts, in case such an alteration in the Judicature should be made, but should the present system continue, I see no reason why the new Committees might not get their Process Verbals established in our present Courts as well as the Grand Voyer has hitherto done. Should this change in the mode of laying out Roads, or something similar be adopted, I am of opinion that the establishing of a Road which now costs the inhabitants of a Township the sum of seventy five dollars, may go through all the formalities for ten or twelve dollars, and not be subject to discouraging delays. The Road Committee, on receiving their Commission should be sworn, under a pecuniary penalty to perform their duties impartially and faithfully.

In cases where the families in a township are less than twenty, the committee of the adjoining Township should be held to perform unto them all the requisite duties of a Road Committee as in their own. Having thus

called your attention to what I consider would be an improved mode of laying out new roads, I will further add that the unsettled lands of all our great land-holders should be taxed, so that they may contribute towards the making of Roads. If I am rightly informed, the Law passed some years ago which provided that the unsettled lands of non-residents in the Townships should be compelled to assist in the making and repairing of Roads, has expired. The Representatives from the Townships should, I think, endeavour to get this Law revived, and the clauses of it so simplified as to enable path-masters of ordinary capacities, not only to understand its provisions but to enforce the labor due from every description of persons on the Road.—And, inasmuch as there are a great many lots, interspersed through the granted lands of the Townships, which are not settled, or granted, perhaps His Majesty's Government, and the Corporation for managing and superintending the Clergy Reserves, would not hesitate, after considering that their lands as well as all others would be essentially enhanced in value, by the making and completion of good and comfortable Roads, to order their respective agents, to contribute a reasonable assistance in this particular.

The Road Law, as it now stands, enjoins that front Roads be made and kept in repair, thirty feet between the two ditches. Had the law required but twenty feet, it would diminish one half of the expense and remove one half of the difficulty of having good Roads. Any one may know that a Road, twenty feet in width, is, and can be made at far less expense than a Road of thirty feet wide. The gravel from the ditches will be sufficient, in most cases, to raise the Road high enough in the centre, and leave abundance of room for discharging the water into the conduits. A Road of this description will soo dry after rain, whereas a Road thirty feet in width will remain wet and miry for a long time; and we have yet to be told, and made to comprehend what possible advantages these unneccessary additional ten feet are to the public. Every one knows that a thirty feet road through moist wood land was never yet finished in the Eastern Townships.

One word more, before I finish this letter. Waggons frequently travel our Roads to market, carrying 50, 60 and 70 cwt, with narrow banded wheels, which deform and tear them in a very destructive manner. All such waggons should be prohibited unless the wheels are six or seven inches wide in the felloe.

I am Gentlemen, &c.

LETTER IV.

GENTLEMEN:

The Legislature in their session, made very liberal provisions for the encouragement and support of elementary schools in the Province. This benevolent law has been received by many with sentiments of great gratitude; and, doubtless, there are many children at this day, receiving instruction that must, without this encouragement, have remained in idleness.—Would it not be expedient, and do not the circumstances of the country require, that measures should be adopted for establishing a seminary of Learning in some convenient place in the Eastern Townships? Were Government disposed to encourage a plan of this description, (and surely it is necessary in a very high degree, as there is not a single establishment in all the

Eastern Townships where the higher branches of education are taught) there can be no doubt, but his Majesty, on proper application being made, would be graciously pleased to make a liberal grant of the waste lands of the Crown for the support of one or more in Canada, which would eventually, under the management of Commissioners or Trustees, at no very remote period, form a permanent fund, for the promotion of education and learning. An institution of this description, might, by an Act of the Government here, together with the subscriptions of private gentlemen, in the meantime be commenced on a scale that would, in some measure meet the wants of the country, in preparing a number of young gentlemen for trade and professions. There are but very few, in the country that are both able and willing to send their sons to a City for education. Some few have sent to the United States, but very many are obliged to forego all the advantages of a literary education, for want of such necessary institutions at home as they would wish. In such a state of things, the neglect of education may be occasioned by carelessness, want of taste, as well as by a want of literary institutions, but how can it be otherwise, till proper seminaries shall be within their reach? But the time is now come, and the situation of many farmers and gentlem n the country is such, and will every year become more so, that many young men would be educated at an academy of the first class, if the opportunity of doing it could be had. Let such an institution once commence, and, if judiciously managed, it must grow; for the circumstances of the Country call for it; and who knows but that, in some future time, perhaps not very remote, become a College or University?

I am, Gentlemen, &c.

LETTER V.

GENTLEMEN:

It would hardly be believed, did the fact not prove it beyond the possibility of a doubt, that the country should at this day have to complain that there is no possible way in which the seller or purchaser of real estate, can satisfy each other in regard to the validity of Title Deeds and Conveyances. In matters of such vast consequence to individuals, it is really extraordinary that provision has never yet been made by law, for the establishment of offices of Record, that should be open for the inspection of all, where Titles, Incumbrances, and every fact relating to the state of land Titles, may be ascertained. That this subject has, more than once, been agitated in the House of Assembly, I know is true; for what reason every bill of this description has hitherto failed, I cannot understand; but I am certain there are many very important reasons why some adequate measures should be adopted by the Legislature to quiet the minds of the people on this subject, by the security it would give to the accumulations of their industry. For without possessing the means of ascertaining the validity of their Titles, it cannot be expected that capitalists will vest their money in Real Estate, in any country, where there is nothing to depend upon but the character or apparent responsibility of the seller of land. The cautious will revolt at the idea, and will naturally be careful how he lays out money to any great extent on so precarious a Tenure. How often is it the case that men in busi-

ness could benefit themselves and others were their titles of such a character as to enable them to raise money on the security of real estate ? But they cannot, as the case now is, because they cannot shew the banker, the broker, or the money lender, that the estate they offer as security is free of incumbrance. How many cases that daily occur, in which an industrious farmer is ousted by the appearance of a Title to his possessions older than his ? Unwilling to loose his property, he may perhaps, be induced, if he is able, to make a second purchase, believing that now he must be secure. Alas, another mortgage rises up, and sweeps his contemplated security from under him. He has paid, and paid again his all for a home, and after all his doubly paid habitation is not his own. Distracted with disappointment and uncertainty, dismayed with his losses, he abandons hope, relaxes his industry and either betakes himself to immoral practices or leaves the country with his bitter curse. This picture is not over coloured. Cases in point may be produced.

How many and grevious are the Law-suits which are produced by this state of things ? Those that have taken place, and those which no doubt will, must be very numerous. In short, it may at once be said that a regular and fixed system of recording Deeds, Conveyances and mortgages that affect the titles of real estate, open for the inspection of all that wish it, should be considered as of equal importance to the welfare of the Province, as the corner stone is to the edifice in building. Having thus pointed out defects, I will now endeavor to suggest such remedies as have occurred to my mind. Should we be so fortunate as to be favoured with an alteration in the system of enrolling Deeds and Conveyances of Land, I would propose that, in every Township where the population amounts to two hundred souls, that Town Records should be kept in a safe place, provided for that purpose, and under the care and custody of a Register Officer appointed by the Executive. The forms of Deeds of Warranty, Quit-claim, and Mortgages should be simplified and settled by statute, and made as short as possible, containing only the necessary covenants, in plain language, free from the useless and cumbersome verbosity that custom has so long consecrated. All such Deeds should be acknowledged before a magistrate,and then registered in the Town Registry, or at all events, in a County Registry. I admit that this mode of conveyancing would, in a great measure, supercede a very considerable part of the business of Notaries ; but the Townships would thereby save from £1500 to £2000 annually. Thus, we would obtain economy, convenience and security, all with respect to a subject that must, by every man of consideration, be appreciated, as of the highest value, for the preservation of his property.

I am Gentlemen, &c.

LETTER VI.

GENTLEMEN :

Would not the establishment of the common Law of England in the Townships, as they are granted under the Free and common Soccage tenure, be most useful and important to our interests ? That the common Law of England is the best and most perfect system of Laws extant, I believe

will be allowed by those who are competent to judge; but whether the English code would be useful in the seigneurial grants, I will not undertake to argue. Long established custom, the natural predeliction in favour of long established habits, and perhaps many other arguments arising from the nature of their grants, may furnish sufficient reasons for retaining the civil Law among the population of French origin; but the same habits, and references among the English, in the Townships, to their own ancient usages, should be allowed to have weight in favor of an alteration in their behalf. I am of opinion that all controversies of Law between persons residing in the Townships, should be heard, tried and determined by the common Law of England and no other.

I have laid it down as a maxim, at the outset, that the Statute Laws of every nation should be so extensively promulgated, as to be put within the reach of all that desire the means of knowing their duties and obligations. I take it for granted that there are as many copies of the annual Statutes sent annually to the Magistrates, Militia Officers and other functionaries, as ought to be afforded at the expence of the public; but how few there are among those officers, either in the civil or military department, that can satisfy the inquirer on hardly any subject that relates to the Statute Law? And why is it so? Because the Laws, those that are repealed as well as those in force, are dispersed in pamphlets, altered and amended; and in no place in the whole country are they all to be found; so that it is impossible to come at the Laws that are really in force with any certainty: I am informed that no man can procure the whole set for a less sum than, ten or twelve pounds; and if we had them, it would take a very long time before we could digest such a cumbrous mass of matter. The mode of printing them in French and English, made up in one Book, is likewise a circumstance that renders the subject more difficult. I would therefore, suggest that all these several inconveniences should be remedied by having suitable commissioners appointed to digest them, and make abstracts of all that are in force, (excepting such as have relation to individuals, and have no concern with the public at large) which digest, when approved of by competent authority, should be a just and true exhibition of the statute Laws of the Country, and binding on the inhabitants. It should be printed and bound in a compact form, in English by itself, and in French by itself, that all persons wishing to possess the Laws of the Country, may be enabled to procure them at their value, as Books of real utility. It would certainly, in my opinion, be a saving of expense, were the annual acts of the Legislature printed in each language separately in such proportion as would answer the purposes of general distribution, among the French and English inhabitants respectively. But, limited as the present distribution allowed by Law is, it is a fact, that many of those, in the Townships that are entitled to receive them, have never to this day (being the 20th of January) seen the acts of last session.

I am Gentlemen, &c.

LETTER VII.

GENTLEMEN:

I intend, in this letter, to make some remarks on the subject of a general Tariff or Fee bill, of all fees taxed or taxable by the several courts in the Province. I believe the fees of all the officers, attorneys and witnesses about the Courts of Justice are established by the Judges, and not by Statute, except those in the Commissioners' Court, where the officers' and clerks' fees are all settled by the Act itself. My objections to this mode of establishing them are various. In my observations I shall use some arguments, and state some facts. It is certainly true that all persons employed in the necessary administration of Justice should be respectably paid, and receive a full and sufficient remuneration their time, and for the exercise of their talents. But are the Judges of the several Courts the best judges of what this remuneration ought to be? In my opinion, they are not.

1st. Because Judges are uniformly raised from the Bar to the Bench, and may therefore be expected to retain some prejudices in favor of the Bar. Many of the officers of a Court, exclusive of the lawyers are also from the Bar. The Judges frequently have sons, or other relatives at the Bar.

2d. The Judges of the Court of K. B., in Canada, are I believe over-burdened with business, in the various and endless details of their office; it cannot therefore be supposed that they have sufficient time to bestow on the various Bills of expense that come before them, in order to equalize and up the Tariffs of the several officers—I am therefore of opinion that all fees about the Courts should be established and settled by a Legislative Act, in order that all persons interested may have knowledge of the same, and be enabled to avoid imposition. The remuneration allowed to witnesses at present is very far from being uniform. Being called before the Bench to undergo an examination, where they have, or take, an opportunity of pleading a special case, it is not surprising that witnesses of the same class and from the same neighborhood should be taxed very differently. The Court, in these cases, I suppose, make an estimate of the profits arising from the employments of the different witnesses at home, and tax their bills accordingly. I know of no principle on which a witness can be so justly remunerated as that of taking into consideration the distance he may have travelled, and the time he is detained at Court; because the one that can tell the best story to the Judge, and can represent his business, and losses in consequence of his absence from it, the most fictitiously, comes off with the largest purse. To say nothing of the time which this proceeding occupies, which is no trivial matter, I am sure that it would be far better for the Province at large, if an Act of Parliament were made to allow a fixed salary to every witness called before a Court, regulated by the distance he has to travel, and the time he is detained. The Judges would, in that case, be relieved from the trouble of listening to many tough stories, and the witnesses from all uncertainty about their compensation. The fees of Lawyers, Sheriffs, Bailiffs, and in short, of every officer about the Court, should all be established, and fixed, by an act of the Legislature.—In this manner, all bills of cost could be made up, and taxed, without hindering the time of the Court, as nothing would be required, but a reference to the fixed rates of allowance, and to see that the charge of mileage and attendance was correct. I do not pretend to say that the fees as regulated by the rules of Court, are too much, or, in general, too little, but merely

that the Legislature is the only authority, as I think, competent to settle what all such fees ought to be, and that, when so settled, they would, of course, be known.

The fees of Bailiffs, as it appears to me, are too exorbitant. Most likely the Court may have graduated their fees on the supposition of their travelling with a single process; and in that case, they may not perhaps be too much; but it is to be observed that they generally carry a bundle of them on the same route. I have been informed that a Bailiff, in the country had started from his home in the morning, and on the third day returned, with seventy pounds in his pocket or earned by serving Writs. This money is principally collected from a class of people that labour hard for a living, and who are compelled either from misfortune, or negligence, to pay costs; it is however difficult in establishing a Tariff, for any Court to foresee the double and triple charges that may be made by its executive officers in the same journey; a moderate rate per mile, or league, would remunerate them well, and most likely do the best justice.

While on this subject, I cannot overlook one or two practices that prevail in the Courts of Montreal, which I conclude must have had their origin in the Rules of that Court, and which, as I conceive, operate very hard and unjustly, without any good reason that I can see to support them. A Writ is issued against a person living in the country, on a Promissory Note, a Merchant's or Mechanic's account, for goods sold and delivered. The Writ of course warns the defendant that he is to appear in person or by his attorney to make his defence, otherwise judgment will go by default, or taken as confessed. The defendant takes them at their word, and knowing the debt to be justly due, he makes no provision for defence, but merely for the payment of the debt. But to his surprise, a witness has been called in perhaps fifty or one hundred miles, to prove the hand writing of the defendant, or that the goods, wares and merchandise were actually received by the defendant, who is now taxed with the expense of proving what never was meant to be denied, perhaps, eight, ten or fifteen dollars for the testimony. If the court are satisfied that the Writ was duly served, without which it cannot proceed at all, what can be the necessity of any thing further to establish the plaintiff's case, than the defendant's neglect to appear, I cannot see or conjecture: it can only be that injustice *might* be done in case there was any mistake about the due service of the Writ.—But as to this point, the witness that appeared to prove the hand writing, or the delivery of the goods, could probably furnish no proof whatever; and besides, the defendant can always have the power of saving himself in this particular when the execution is levied.

The other case is this. A fee of one shilling per league is allowed on all Writs of Distress, for returning them to the Court, after they are paid and discharged. When an Execution is paid, and discharged by the officer who has it in charge, surely it matters very little what becomes of it then, because the record shews the fact that it has issued, if it be paid and discharged. The Plaintiff and Defendant have no more to do with it. A Defendant living in the Townships is taxed from four to eight dollars for this unnecessary service. This certainly operates hard on a man that perhaps has sold all his loose property, except his last cow, to pay the debt and costs, and is now obliged to sell her to pay for returning an Execution to Court which he considers to be of no manner of consequence, whether it be returned or not. I acknowledge that the Execution, returned

into Court, with the officer's proceedings thereon, makes the record more complete, and perhaps for various reasons, Sheriff's Writs of Distress may be necessary, in many cases on account of further proceedings, to be returned. But would it not do better Justice that Bailiffs should be under obligation to return all such writs issued from the Inferior Term which are closed and finished at covenient opportunies, not to exceed six months, when it might be done without travelling for that purpose, and without fees.

I take it that the Writs issued in all the Courts, except those of the Commissioners' Courts for the trial of small causes, are taxed at different prices according to the magnitude of the debt, with a duty, and that the money thus received goes into the public Chest, for the purpose of being expended in building or repairing Goals, and Court Houses, or other uses. On whom then does this tax fall? Is it on the rich, or on the poor? Insome cases, without doubt, on the rich, as well as on the poor, but by far the greatest part falls on the poor; as most of the suits for debt are brought against those who are so embarrassed, or so negligent, as to require compulsion. But why should the poor, in this manner be taxed, for the building of Court Houses and Goals, any more than their just proportion. If taxes must be raised, why are they not levied on property? The rich can well afford to pay on this last principle, because, as protection and security are the grand objects of civil society, the rich have more to protect, and of course may well afford to pay in proportion to that protection which they receive.

I am gentlemen, &c.

LETTER VIII.

GENTLEMEN:

I shall, in this, endeavor to draw your attention to a subject of some moment, in the practice of the Criminal Courts, particularly as it respects the mode of taxing witnesses. It may be premised, I believe, with the utmost propriety, that the Laws ought to be framed, and the practice under them so conducted, that they may never be said to operate as an inducement to the commission of Crime. Is the present mode of taxing witnesses before the Criminal Courts, in Canada, free from implications of this nature? I must say I think not. Because the witnesses are required to swear, before they are allowed compensation, that they are poor and needy, and cannot defray their own expenses. Few there are perhaps, who are called as witnesses to attend the Criminal Courts from the country, that possess ready money sufficient to permit them to spend four or five pounds for the promotion of publick justice, without inconveniece, and still fewer that are willing to do so. The consequence, therefore, is, that most of the witnesses are induced to swallow the oath, although it should stick a little as it passes down, probably making a kind of conscientious compromise with themselves that the words of the oath, and the meaning of the Judge, or the Law, are at variance; and that the whole of it means nothing more than that they cannot spare their money without some inconvenience. That the subjects of every government, when able to do so, ought to be willing to spend a portion of their time and money for the public service, I admit. But as taxa-

ation of every kind, for the support of a state, ought to be equal, I deny the justice, as I do the expediency of this practice. There can be no sufficient reason offered, in my opinion, why one individual should contribute in money and time, six or eight pounds for the use of the public, merely because he has been so unfortunate as to have knowledge of some depredation on the laws of society committed by a third person. If the funds of the country are insufficient for the support of civil justice, upon the basis of fair and equitable remuneration allowed to all persons called on for their services, where does thedifficulty exist, in raising the funds by equal taxation? It cannot be said that the country is burthened with taxes. The imposts or duties on merchandize, I believe, are light; and on some articles, perhaps, benefit would result from raising or increasing the tax; of which I shall speak hereafter. If I have shewn that this practice is not founded in justice, it will of course follow that it ought to be altered; and as to the expediency of doing so, I will remark that the words made use of in the oath are positive, and of such obvious meaning, that no person but one that is extremely destitute of the means of support, can take it with propriety; therefore it may be necessary to alter the practice. As I have, in the course of these papers, expressed my sense of the destructive operation of distilled spirits on the constitutions, moral and religious habits, and temporal prosperity of the inhabitants of most of the civil societies of the world, at the present day; I would enquire whether a heavy duty on all distilled spirits, of foreign or domestic manufacture, would not be of general utility. If the duty was large it would certainly lessen the consumption, and so far would have a happy influence; because if those persons that are determined to pursue a course of self-destruction, by using all their disposable means in the purchase and use of ardent spirits, at the rate of two shillings and sixpence to three shillings the gallon, were obliged to pay seven shillings and six pence the gallon, the probable consequence would be that they would make use of but one gallon where they now use three; the health & happiness of a portion of community would be promoted in that ratio, and the commission of that portion of crime that is attributable to dissipated habits of drinking, would be diminished in the same proportion. Allowing as much capital to be vested in the article of distilled spirits, including the duty, as is now vested in it without the duty, two thirds of the amount of that capital would be placed in the public chest, to be disposed of in the necessary and important improvements of the country, in its internal communications, in promoting literary and religious establishments, &c. I will not close this letter without noticing one other practice in the proceedings of the criminal Courts, which I cannot believe is well calculated to promote justice, or that respect among the people that ever ought to be cherished for the high judicial establishments of the country; I mean the exercise of an authority by the attorney-general of entirely debarring such witnesses from taxation, as he thinks proper, and sending them away without any compensation. I conclude he is supported by the law in this course of proceeding, or he would not be likely to exercise such an authority. Is such power safe or proper in the hands of any individual connected with the Court? If such power be vested any where, I am of opinion that it ought to be vested in the Judges of the Court, where an open and public investigation may take place. On the contrary, when it is in the power of the attorney-general to say to the witness, who is recognized to appear in Court under a penalty of one hundred pounds, "Sir, I

will not tax your bill—be off with you," when no public reasons are assigned for sending the witness away without fees,* I say such arbitrary power is dangerous; and if supported by the law, that law, in my opinion, ought to be altered. If assumed, it becomes a dangerous precedent, and ought to be stopped. That there are cases frequently occurring before the criminal courts, which are vexatious or ill founded, calculated to disappoint and vex the feelings of a well educated lawyer, I admit is true, which arise from exasperated feelings of partisans, or injudicious proceedings of magistrates, or both those causes conjointly. Although this be true, and also it be true that some witnesses actually deserve punishment for their conduct; yet I can never admit that the power of inflicting such punishment ought to be vested in the attorney-general, or any other person not holding a public audience or inquiry in respect of the matter. I will therefore propose in respect to witnesses attending the Criminal Courts as I have done respecting witnesses attending the courts of civil jurisdiction, that each witness, legally called before it, be allowed a fixed salary, which should at all events be equal to his expenditures; to wit, a certain price for each mile or league he travels, and a certain sum for each day he attends the court; that he be sworn by some officer of the Court, or one appointed for that purpose, and paid without further inquiry. In this case, the attorney-general will be relieved of the arduous task of valuing all those services; witnesses will be contented, and much time saved in transacting the business. I believe also, there would be, if this mode were adopted, as little money actually paid out of the public chest as the present practice requires.

I am, Gentlemen, &c.

LETTER IX.

GENTLEMEN:

I will now take the liberty of calling your attention to a subject which I think is of some importance; I mean that of real estates sold by the sheriff for the payment of debts. There may be some instances in cities and a few flourishing villages, where land may bring something near its value at such sales; but in most cases, especially in the country, no lands of any description will sell for cash at forced sales on an emergency, for more than one fourth of their real value. And thus it frequently happens that the purchaser of a lot of land for which he has engaged to pay one hundred pounds, and has actually paid one half of the purchase money, and made improvements to the value of one hundred pounds more, will loose the whole at a sheriff's sale to pay the remaining half, and still leave a balance against him. In some cases, where the debt and cost do not amount to one quarter or one fifth part of the value of the land, the creditor will strip him of his personal property to pay the cost, and then sell the land for the

* It is far from the intention of the author to attach any special impropriety to the conduct of the highly respectable incumbent of this responsible office, because he believes the error, if it be one, is in the law itself, or in long established usage.

remainder. There are many cases where valuable farms have been sold at one fourth or one third of their value ; where the creditor bids them in at a price that ruins the poor debtor, and then perhaps within a month afterwards, sells them again at their full value. The debtor is turned out of doors, and condemned to earn his living as a day labourer. The question then arises, how can these things be avoided? As I said before that I did not mean to point out defects in the Laws or practices of the country, without at the same time suggesting remedies, I will endeavour to bring the question to a fair issue, and then answer it. It will probably be said that Legislative aid cannot be expected to interfere with the neglect, the incapacity or misfortunes of individuals, when it happens that they are not able to pay their debts, when the faith of contracting parties is mutually pledged ; and when the inability of any part of the community to manage their business with prudence and economy, is such as to render individuals unable punctually to pay their debts, it ought rather to be considered as their peculiar misfortune, and therefore out of their power to avoid, as well as beyond the reach of Legislative enactments.

The faith of contracting parties, let it be observed,ought to be preserved entire, as no act, having a retrospective operation, the tendency of which is to destroy, or in any wise to alter the faith, credit or security of contracting parties, can be just. And I also say, that in all well regulated governments, such legal enactments will and ought to be made as are calculated to prevent injustice, and to enable all persons, rich and poor, to have recourse to the use of proper means, that will secure and recover their own, but nothing more. The Law which governs the sale of lands to pay debts due in cash, should be altered, so that when one finds it necessary to levy his execution on land, it may be lawful for the defendant, at any time subsequent to the levy of such Writ of Execution, to make tender of his lands, or of as much land as will be sufficient, to the plaintiff, at a valuation to be fixed by experts appointed for that purpose by the Court that had issued the Writ. This valuation should be in cash, or in conformity to the terms and nature of the original contract ; and then if no prior claim on that property should appear, after due notice of the proceedings had been, it may be lawful for the court, in case it may have approved of the valuation so made, to direct the sheriff to execute a sufficient deed of conveyance to the plaintiff of as much land as will suffice to pay the debt and cost. As the case now stands, A sells lands to B, C and D on credit. The purchasers perhaps pay part in advance, and go on to make improvements ; but at the expiration of three or four years, from misfortunes, ill-health, bad crops, or any other cause, find themselves unable to pay the rest of the purchase money. They are then sued. Their personal property is sold, and then the land, after being considerably improved ; and as it will, of course, fall into the hands of the Plaintiff, he will soon sell it again for its value. I do not mean to say that all creditors sacrifice and ruin their debtors in this way, but there are, and always will be, too many persons who are ready to take every possible advantage of the distress of their fellow creatures to amend their own fortunes ; whereas, if they were obliged to accept of property in payment and satisfaction of the debt, at a valuation,there could never be so much ·ry inflicted on individuals, as there is by the present practice.

LETTER X.

GENTLEMEN:

I will, in this letter, make some remarks on the difficulties and embarrassments, inflicted on many of his Majesty's subjects, in consequence of the uncertainty of titles to real estate. As it has been difficult, if not utterly impossible, for the purchaser to ascertain with certainty the real situation of his title, cases have frequently occurred, and no doubt will be more frequent than they have been, in which a title older, and of course better, arises; and very many industrious farmers have been driven to the necessity of abandoning their possessions, or of making a second purchase of the title thus presented in terrorem and hanging over their heads. If this course is taken, the first purchase money is lost; if not able or willing to do this, the devoted farmer thus situated, is constrained not only to lose his first purchase money, but also betterments, perhaps of greater value than the original value of the lands. I do not deny but there are some strong cases in which the Courts have intervened a partial remedy when resorted to under long standing possession. Yet most farmers in the townships, and it is of the townships that I speak more particularly, are in such moderate circumstances, that the various details of a law suit would threaten nothing but ruin to them if they presumed to resist. The dilemma in which many of the yeomanry of the country, who may be thus situated, are placed, would be partially remedied, if the laws were to be altered in such manner that all those persons, who occupy lands under a title purchase made in good faith, should be quieted in his, her or their possession, by the payment of a sum of money equal to the value of the possession in a state of nature; or in other words, I would propose it be enacted that on ejectment it may be lawful for all persons occupying lands, actually purchased in good faith, to file a plea for compensation to the amount of the just value of all improvements by them made on said land or possession, which plea should become *absolute*, unless the plaintiff should choose rather to sell the possession at a valuation to be determined by experts to be appointed by the court for that purpose, the valuation to be made on a basis excluding the betterments in its estimation.—This would, in my opinion, do substantial justice to the landlord, and in many cases would save from utter ruin settlers who may have been deceived and cheated in the titles of their land.

It may be further observed, that were the laws on this subject established by the statute on the principles abovementioned, or similar to them, it is most probable that resort would seldom be had to courts of justice in these cases, inasmuch as the parties, without much expense, would either agree or select persons themselves to settle all questions that might arise between them.

Would it be useful for the parishes and townships in this province to be constituted, by act of Parliament, bodies politic for certain purposes or not? I shall take the liberty of answering this question in the affirmative, especially as it relates to the townships, and shall assign my reasons. There are many local regulations that the free holders of each parish or township would be better judges of the operation of, than even the legislature itself. I will instance the case of the statute made at the last session, purporting to improve or support the agricultural interest, (the precise title of the act, is not recollected and is not at hand) in which there is a clause or clauses prohibiting domestic beasts of every kind from running at large

Those clauses in that law are no doubt convenient and necessary in most of the parishes; whereas a rigid pursuance of the penalties of it in the new townships, would very much distress most of the inhabitants, because it is necessary for the new settlers to permit their beasts to run at large for the purpose of grazing. There are many instances in the townships, and I believe also in the parishes, in which some of the inhabitants are in such habits of intemperance, and the consequent improper management of their affairs, that nothing short of beggary for themselves and families can be expected, unless the practices of such persons can be stopped. I might proceed to mention many other things to shew the necessity there is for constituting the freeholders of the townships and parishes into bodies politic for certain purposes; but the brevity the author designed to confine himself to in this work, and the very limited time he has at his disposal to devote to it, will confine him to general remarks, to wit, to hold annual meetings for the purpose of choosing trustees or selectmen, whose duty it might be, if the law made provision for it, to take charge of the property and conduct of such persons within the township or parish as are conducting in such a manner as requires overseers; that at such annual meeting, a majority of freeholders present be authorized to establish regulations in relation to beasts running at large, and a variety of other local matters.

Is there not some inconvenience attending the law as it now is, in the collection of small debts, especially near the frontiers of the province? Because the laws do not admit of a seizure of property to secure small debts, those therefore, who are disposed, may and often do defraud their creditors by crossing the lines with their effects in defiance of them. As I am an advocate for the abolition of imprisonment for debt, I would not propose as a remedy to the evil, that the law be so altered, that a capias for the body might be obtained; but that on due application to any court, having jurisdiction over the matter of complaint, a seizure for the goods and chattels of the defendant might issue, on the oath of the plaintiff; the loss of small debts would often be prevented of which the honest and industrious citizen now complains, and the fraudulent and absconding debtor defeated in his unjust designs.

I am, Gentlemen, &c.

LETTER XI.

GENTLEMEN:

I have, in a former Letter, made some remarks intended to prove the necessity there is for an immediate alteration in the judicial establishments in those sections of the country remotely situated from the present established courts; those observations were made, however, with a view of suggesting a temporary relief thereby. In this Letter I mean to point out, what I consider to be, the most prominent defects in the Judicial system of the Province. And although the subject I acknowledge to be very important, and I may not hit the nail on the head in any essential particular; yet without further apology, I shall with the candor I have heretofore used, sub-

mit my remarks. The observations in this letter are made more with a view of drawing the attention of the public to the subject of an important alteration in the judicial system, than in the expectation of any immediate steps being taken on the subject. I consider the defect of the Judicial system of Lower Canada to consist, 1st. in the great disproportion between the business necessary to be done and the number of Judges appointed to do it, and the great distance that suitors have to travel that are situated in the remote parts of the present districts to get before the Courts.—2d. that the prerogatives of the Courts are insufficient in themselves to promote the best interests of the country.—3d. that the proceedings of the Courts, arising from their rules of practice or some other cause, are not well calculated to promote Justice.

Firstly. I believe the district of Montreal comprises a territory equal to from fifteen to twenty thousand square miles, a great part of which is denselysettled. Much of the legal business transacted before the court of that district, originates from fifty to one hundred miles from the Court; the parties, witnesses, &c. have to travel that distance; the fees and charges of the executive officers of the court in executing processes, at such a distance, are also very burthensome to the suitors—and what has a tendency to render the foregoing circumstances still more oppressive, is the fact that the Judges of the Court are so much crowded with the various avocations of their business, that they cannot despatch the parties and witnesses until they have suffered severe delays and made repeated journies. Can it be expected that four Justices are competent promptly to despatch the criminal and civil judicial business of such an extent of territory and population. Twenty years since most likely they might have done so; but the legal business of the country probably is three times as great as it was twenty years ago. This state of things is, therefore, calculated to promote no other interests in the country but the interest of Lawyers; it no doubt accommodates them, because the greater the delay the greater will be the fees for attendance. It will not be denied, I believe, that repeated instances of suits having been three, four and five years, & from that to eight or ten years pending argues that there is something rotten in the state of Denmark. I attribute it in a great measure to the over-burthened state of the Court in respect to its necessary employments, rendering those slight causes for delay adequate to procrastinate suits, when it is actually out of the power of the Court to try and adjudge them if the parties were ready and willing. The same arguments I have here applied to the district of Montreal, will apply to the other districts in relation to their geographical extent; whether the courts are in like manner over run with business, I do not pretend to know.

Secondly. The prerogatives of the Courtsare insufficient. I believe the Courts of this province have no Chancery powers vested in them by Law. Experience has proved that no code of Lwas can be perfect and adequate to do justice in all cases, without having recourse to other principles in certain cases; this, under the English code, is a Court of Chancery, where the rules and course adopted in taking evidence, and in other circumstances, are varied in such manner as to admit the parties concerned, to arrive at and secure the object for which all judicial establishments are formed, to wit, justice, when the principles of the law would not admit the parties to come at this object without the intervention of the Court of Chancery. It may therefore be reasonably presumed that in the execution of any system of laws, where such powers are not vested in the same Judges, or in a separate Court, there will exist a kind of imperious ne-

cessity, in particular cases, of breaking down the rigid and fixed principles of law in order to arrive at justice, which will operate to a certain extent to reduce the high judicial establishment of any country, so situated, to a mere arbitration. Whenever this is done, the Court, instead of being the expounders of the law only, are the framers of it; and are, to such extent as they proceed in this way, of course absolute; they cannot be accountable for any course of conduct which has been produced by the incidental circumstances of a particular case; of course such state of the judiciary must, in its nature and application, be eventually dangerous. I have heard it remarked often, that the reason wherefore the recognizances, and bail bonds, given in behalf of the criminals, witnesses, &c. in the criminal Courts, are not prosecuted and collected, is, that there are no powers vested in the Courts by which they are authorized to chancer them; that if collected at all, it must be by a strict adherence to the penalty in all cases. For myself I do not pretend to know the reason why these cases are never called up. I will however observe, that it appears to me the neglect in prosecuting public delinquents in this particular, is forming a very bad precedent, because the idea of becoming bail in any case where bail may be received, is becoming a subject rather of merriment than terror, as few if any prosecutions have been instituted to recover those penalties,—besides a considerable advantage would accrue to the treasury if they were collected.

Thirdly. The proceedings of the Courts by reason of these rules of practice, or some other cause, are not well calculated to promote justice. The most prominent article, and which will form the basis of my animadversions under this head, is the method adopted by the Court of King's Bench, at the Superior terms, of taking testimony in civil causes; I mean by affidavits or depositions. My objections to this practice are, Firstly, The delay and aggravated expenses to clients occasioned by it; Secondly, The great facility a corrupt witness has of imposing upon the Court, which would not exist to the same degree by a different practice; Thirdly, The encouragement given to intriguing parties to practice what I will here denominate the chicanery of the law, in making out and defending their cause, and Lastly, The great perplexity and long attention that will be frequently imposed on the Judges in examining such lengthy and contradictory documents.

Firstly. It is to be observed that few law suits, which have been pending within the circle of my knowledge, before the Superior term of the Court of King's Bench at Montreal, of much concernment, have advanced through the whole formalities of taking the testimony in less than two years; entracing the time of session of eight Courts. I know of many that have occupied four or five years, after commencing the depositions. In one instance, a witness has spent twenty-four days, and made four or five journeys fifty miles, to communicate his testimony, which I venture to say, had the cause been on trial before the Court, and the witness examined before the Court, would have been communicated in less than half an hour.

I do believe myself, that some particular causes may be cited, in which the Court, or part of the Judges, a part of the bar and the clients and witnesses, the latter under heavy incidental expenses, are hindered from one to three months, which if all the parties and witnesses had been called directly before the Court, might have been discharged in one day; and the Court might have been in a situation to have done better justice than can be expected, after wading through the tedious process of taking the depositions. Is there any radical difficulty in the trial of a civil more than a

criminal cause, by examining the witnesses in open Court, when the cause is on trial? Were this mode adopted, it would, in my opinion, save a great proportion of the expenses now incident to legal proceedings in our Courts of superior jurisdiction.

Secondly. The great facility a corrupt witness has of imposing on the Court, which would not exist in the same degree by a different practice.

It may be observed for the information of those not acquainted with the particular mode of taking the evidence in our courts, that on the commencement of the parties to examine testimony, the plaintiff introduces one or two witnesses, as may be convenient; those witnesses are sworn, and are then taken to some remote part of the court room and examined by the counsel for the plaintiff, and afterwards by the counsel for the defendant. The minutes are taken by some writer employed for that purpose. Perhaps five or six of those examinations are going on at the same time. Sometimes I believe the Counsel will exert a degree of diligence that may operate to close the depositions of two or three witnesses in five or six witness days appointed by the Court; and where there are many witnesses necessary in the investigation of a cause, it seldom happens that the cause is soon finished. After thus premising the practice as it now exists, I will observe that the Judges of the Court seldom, if ever, hear or know any thing of the testimony of the witnesses thus examined, except what they gather afterwards from the depositions themselves. All those conclusions, therefore, which are capable of being drawn from the conscious dignity and satisfactory details of witnesses, are lost; the whole testimony stands on a level, unless it so happen that a witness traduces himself, or is traduced by some other testimony; and this it may reasonably be expected, will not so frequently happen as it would do if the witnesses were called directly before the Court, and testified, viva voce, before the Judges; because the dignity of a Court and awe inspired by a respectable audience, will frequently unmask a witness, that, in a retired part of the Court room, with no auditors but the clients and counsel, will brazen out his testimony true or false; therefore I conclude that a corrupt witness will much more frequently impose on the Court and injure the parties, than would be likely to happen if they were to adopt the practice of hearing the witnesses and trying the cause at one and the same sitting.

Thirdly. The great encouragement that this method of taking evidence affords to calculating and intriguing partisans, I think is no minor consideration in estimating its merits. The plaintiff begins to make out his case by taking his stand, and having the privilege of keeping it as long almost as he pleases; he will perhaps proceed to make out something of a case from a very small *capital stock* in real testimony; one witness after another, and one court after another, it would be strange if the plaintiff could not with proper industry, make a case plausible; the defendant has the same privilege; and if intrigue happens to constitute any part of the character of the parties, I hesitate not to say that this method of taking evidence is remarkably well calculated to elicit its most extensive powers on these occasions. It is not my intention to impeach the views of partisans to a law suit with improper motives, for I am confident that many persons would disdain any practices in relation to suits at law, that were not supported by the principles of honesty and honor, as in another concernments of life. But, inasmuch as this is not the case with all, it ought perhaps to be considered as an evil, that any person should have an opportunity to promote these interests by improper means, when it may as well or better be avoided

Fourthly. I cannot but consider this method of taking testimony in our Courts as attended with great trouble and perplexity to the Court and the officers of record. Where the depositions are lengthy and numerous, and most likely at the same time contradictory, I should believe it would require much time and attention to investigate them, with a prospect of being able to render justice to the parties. Besides the difficulty of getting the best conclusions relative to the facts, the volumes of testimony of this sort, serve to incumber the records, and produce much trouble to the clerks.

I shall conclude my remarks on this subject, by observing what I have partly suggested already, that if the practice of trying civil causes were altered, the Court taking audience of the testimony, and arguments of counsel, in succession, finishing each trial in its due order, that much time would be saved of the Court, great delays prevented, and a very great proportion of the expenses attending the course of business as it now is conducted, saved to the parties. Is there not an apparent inconsistency in this practice relative to depositions in the Courts of Canada? I believe that no depositions are allowed by law, or will be admitted by the practice of the Courts in Canada, unless taken under a special commission; the witnesses must come personally into Court; and yet I can hardly conceive that any deposition taken by a Judge or magistrate under due certificates, in any part of the province, or even out of it, which in its execution would have as few circumstances of solemnity about it as a deposition taken by a writer or clerk, in some remote nook of the Court house. There are no restraints or decorum in the proceeding, except what may arise from the gentlemen of the Bar present; and as their business is principally to quarrel, to gain as much, and grant as little as possible in the enquiry, the awe or dignity that those gentlemen are likely to inspire will have but small operation on the witnesses. I believe it is true that occasionally a reference is had to the Court on these occasions, to decide some interlocatory question or preserve order when the altercation of the Gentlemen of the Black Robe rises too high. If this mode of trying causes, by depositions is to continue, would it not be advisable, sometimes to admit them to be taken before Judges, Magistrates or Commissioners appointed for that purpose, in different sections of the country, and prevent the necessity of bringing such witnesses, one, two, or three hundred miles for the purpose of giving their depositions in some remote corner of the Court house.

I am, Gentlemen, &c.

LETTER XII.

GENTLEMEN:

In my last I have made some remarks on the Judicial system of the province. I shall in this propose my own opinion in respect of its improvement: I believe the Legislature are aware, that some alteration ought to take place, but have not yet been able to agree in the manner of it.—Whether the English Laws were wholly, or partially established, or not established at all, would not the adoption of a trial by Jury of all issues of fact where either of the parties are pleased to require it, be an improve-

ment in our Judicial system? I do not say that it would, but do believe it would suit the English population of the country to have such an alteration take place. I will propose for the purpose of bringing the Law convenient to the people, that each of the three large districts be divided into four, five or six circles, or judicial districts, as may be most convenient, according to the geographical dimensions & population of each. The Court of King's Bench to consist of nine Justices, including the Chief Justice, that is to say, three to each of the large districts. Those three justices to hold circuit courts, twice in each year in the country districts, and oftener if the case required it in the city districts.—That this court be constituted a Court of Chancery, and that a Jury be summoned of the freeholders of the district, at each term, to try all issues of fact when the parties required them to be so inquired into; that the practice of taking depositions be dispensed with, and all trials to go directly to the Court or jury, as the case may be, which would produce a speedy termination to suits at Law.

That a County Court be constituted, consisting of one Judge, to be a Lawyer, and to hold semi-annual circuits in as many counties as convenient—a jury likewise attending of the freeholders of the county; this court to have jurisdiction at law only, and to the amount of fifty pounds with an allowance of an appeal to the Court of King's Bench. That the magistrates in each town or parish, or a commissioners' court in each town if applied for, be appointed, with a jury of three persons attending, to hold courts six times in a year, having jurisdiction to the amount of ten pounds, subject to an appeal to the County Court. Thus the greater part of the simple collection business of small debts would be done without much intervening expenses; the more intricate causes would some of them be appealed to the County Court. I would propose as a Supreme Court of Appeals, one session each year, to consist of all the Justices of the Court of King's Bench; from thence should be no appeal to the King in Council, unless it be certified by six out of the nine Justices, to be a cause requiring further investigation; and not even then, unless the appellant could make it appear to the satisfaction of the Court, that the adverse party was worth, at any rate, two thousand pounds; because it is small consolation to a citizen in moderate circumstances to know that he lives under a government having a good system of laws and an independent Judiciary, if at the same time he is apprised that in arriving at the goal which is to consummate justice to him, he, in his controversy with a rich and powerful antagonist, is to suffer expenses and delays that cannot fail to ruin him in its progress. The criminal terms to be once a year in the country circles, and twice in the cities; capital offenders may be transmitted to the metropolis for trial, in cases where it is desirable to expedite Justice. A Judge to be appointed in each of the three large districts, to hold sessions quarterly in each of the circles, as a court of quarter sessions, with the neighboring magistrates of the peace, and whose duty it might be to take probate of wills and testaments, and settle the estates of the dead, with an allowance of an appeal to the Court of King's Bench.

I have thus suggested the outlines of a Judiciary system for the Province which without doubt is very defective; but still it appears to me that something like this, if effected, would be likely to save the country, in the business of legal investigations, from one to two hundred per centum from the expenses incurred by the present system.

I am, Gentlemen, yours, &c.

LETTER XIII.

GENTLEMEN:

I shall make some remarks in this Letter on the Criminal Law of the country; not because I suppose you have the power, if you had the inclination, to alter it, but because I consider it to be a subject of importance in itself, and one that should be introduced on the tapis for public investigation. I believe that one reason why many essential improvements are neglected to be made in the civil regulations of society is, that the subjects of them are neglected to be brought before the bar of public opinion; the current moves on in its accustomed channel, and no one takes notice whether its waters are pure or turpid; custom and long endurance of evils, render them familiar, and like the habits of the husbandman, they are apt to be transmitted from generation to generation without inquiry and without reform. It has been frequently remarked that the criminal code of the English Law is very severe; and I believe this remark is generally admitted to be true. In my observations on this subject, I do not intend to inquire or enter into any discussion in respect to their application to the circumstances of the United Kingdom; but whether they are well calculated for the present circumstances of this province. In examining this subject, it necessarily decides itself into two branches, to wit, the right or authority that civil society have to inflict capital punishment, or in other words, to take the lives of their fellow subjects for crimes committed in society--and the expediency of adopting such laws. I do not mean to enter into an argument on the first part of this subject, because I do not consider myself qualified to do justice to the subject; nor is it within the compass prescribed for this work; I shall only remark that there may be the highest degree of wisdom, of justice, and propriety, in leaving it to the Creator of the whole universe to dispose of the lives of his creatures, in his own wisdom, save only in those imperious cases of crime, in which the safety of the state can be secure in no other way than by taking the life of the criminal. My observations will, therefore, be mostly confined to the expediency of capital punishment—by which I mean the taking the lives of those who commit depredations on the laws of society. There are two grounds on which the apparent necessity of the criminal law has been supported, as it relates to the subject of capital punishment. 1st. The necessity of example, which is meant to operate by way of prevention; and, 2nd, The security that society receives from the death of an offender against his future depredations.

As it relates to the first, to wit, the force of example, is it not pretty certain that a system of criminal law, in which a due proportion is observed between the punishment and the offence, is the best? because, in such cases, the penalty will be uniformly inflicted; whereas, in cases where that proportion is not observed, the penalty will be commuted for one less severe, and which is commensurate to the crime, or else remitted altogether; the feelings of humanity are such with all mankind, it may never be expected that the life of a fellow being will be actually taken for stealing a small sum, or any other offence of a minor cast. The consequence is, that so far as example has been meant to operate in deterring others from the commission of the same offence, it loses its influence, and rather has a contrary effect, because, in most instances, the criminal gets off so lightly it encourages rather than deters others. Whereas, if a due proportion is observed between the crime and the punishment, that punishment will be rigidly adher-

ed to in every case, and in my opinion would have a greater effect on the principle of example, than can be expected as the law now is. This is not all; justice, which ought ever to be the criterion and measure of all criminal or civil laws, forbids such code as does not preserve a due proportion between crime & punishment. I believe that in more than nine cases out of ten in our criminal courts, the penalty annexed by law to the offence committed, is remitted altogether or commuted to some other punishment.—And in respect to the security that society obtains it must be far less in such a state of things than it would be if a due and commensurate punishment were inflicted in every case on the perpetrators of crime.

Would not imprisonment to hard labour, under circumstances that would render confinement certain and secure, for all crimes excepting two or three, wherein society cannot be perfectly secure short of the death of the criminal, be a better, safer, and more merciful and just method of punishing offenders in Canada than the method now in practice? I believe it would, because the necessity of taking the lives of men would often be avoided, society would be safe from the machinations of the criminal, and the labours of a class of people that are now a burthen to the public for their support, in the common prisons of the country, might, under due regulations, produce a revenue equal to their own support; charity and benevolence would be led to hope that many of those unfortunate persons, placed thus in a situation where they would have constant employment, be decently fed and treated with humanity, would be reclaimed from the paths of crime and vice. It certainly is to be observed with some propriety, that the common prisons in Canada, where these unfortunate persons are collected together in idleness, and lightly fed as a punishment, are not well calculated to produce reformation.

I have made the foregoing concise remarks on a subject that might, with propriety attract the attention of the learned civilian.

I am, Gentlemen, &c.

LETTER XIV.

Gentlemen:

I have said in my preliminary maxims, that the government ought to consult the natural advantages of the country for trade, agricultural improvements, &c. Are there no situations in which essential advantages may result to the people from the construction of Canals, other than those already contemplated? I believe if there are no difficulties to surmount, and I think there are not, that a canal to connect lake Memphremagog with the river St. Lawrence, by way of the St. Francois, the Nicolet, or both. would be an acquisition to the District of St. Francois of great importance, and would not in its benefits be confined to that district alone. The portion of country adjacent to Lake Memphremagog and the River St. Francois, is for the most part excellent land and calculated for high agricultural attainments; but is inland, and the expenses of transportation to and from the market places is attended with great trouble and expense, more especially as the roads are mostly in an unfinished state; an enterprize of the kind I have alove suggested. if there are no obstacles, of which I do not pretend to judge,

would, if carried into effect, raise that portion of the country to immediate consequence, and would be the means of making a quick market for great portions of waste lands of the Crown, which are lying as a dead weight on account of the great expenses attending transportation to and from that portion of the country. It would also be the means, if effected, of introducing great quantities of produce from the United States to the market at Quebec, or for exportation, particularly from a portion of country in the vicinity of Lake Memphremagog.

I shall close this letter with a few remarks on the great importance of a few leading roads from remote inland situations, to the great market towns or cities in Canada. It is true, although it is much to be regretted, that there are few roads even in the French parishes, that are strait or very well finished, and in the townships still fewer; it may be remarked, that the traveller, starting from almost any village or town in the country, to get to Montreal has to travel say one hundred and twenty miles, or at that rate, when a straight line would carry him there in ninety. If therefore a leading road from the eastern townships, under the patronage of government was begun to lead to Montreal, and another to Quebec, to have no object but public convenience, and be made entirely in the shortest route, without variation to accommodate individuals, much advantage would result from it, in my opinion.

I am, Gentlemen, yours, &c.

LETTER XV.

GENTLEMEN:

Would not an alteration in the law by which Licences for Stores and Taverns are taxed, be useful? I think it would, because according to the provisions of the law, as it now stands, I believe all stores and taverns are taxed equally; that is, all in the cities equally, and all in the country equally; whereas, in many situations in the country, where houses of refreshment are absolutely necessary for the convenience of the traveller, the keeper of such house of entertainment, from the obscurity of the situation he occupies, cannot afford to pay for a licence, as the profits of his business would not admit of it; he is constrained, therefore, to set the laws at defiance, and sell his little articles to travellers without licence, and run the hazard of prosecution, or else to forego the privilege entirely of keeping those refreshments. The same observations will apply to small stores in the new settlements. I should think, therefore, that it would be useful to have the law so altered that all stores and taverns in the country may be taxed in a due proportion to the situation they occupy, and the business they do. I am, Gentlemen, yours, &c.

LETTER XVI.

GENTLEMEN:

In respect to the external interests or policy of the Province of Lower Canada, I have but few remarks to make. As a Province, and integral

part of a great empire, we have little to say or do with foreign concerns.—In our relations with Great Britain, so far as we have the power to exercise any influence, it is no doubt for the interest of the country to cherish, in every prudent and proper manner, our export trade with that nation and her other colonies, and to endeavour, (which will of course be done) to protect it from all the exactions of duties or embarrassments that the circumstances may admit, and particularly that the government here make ample and efficient provision for the support of its civil establishments, that it may with truth be urged that the country is not a burthen to Great Britain. In such case, the apparent injustice that will attend any proposition or attempt of that power to tax these Provinces in a manner to bear a portion of her enormous public burthens, any farther than we have or may be the occasion of them, will most assuredly with that magnanimous government, on the slightest reflection, be relinquished. The advantages of the extensive trade carried on between England, her West India colonies, and these Provinces, is too apparent to fail of dictating every possible facility to its improvement which the influence and investigation of our government here may afford.

In our connexion with the United States, (which, owing to the extended adjoining frontier of that Government, and the convenience of our markets for the reception of a great portion of her surplus produce) it may be remarked that so far as the views and policy of the British Cabinet will admit of it, it is for the interest of these Provinces to promote the intercourse and trade with that power to as great an extent as possible. In this view, therefore, the promotion of all conveniences, as it relates to roads and navigation, in that direction, and the establishment of custom-houses in such convenient situations as will accommodate that trade, are most obvious.—And inasmuch as the frontier between the United States and the Canadas is thus extensive, and the great opportunity there is for persons on either side of the line of division between the two governments, of escaping from punishment after the commission of crime; I believe it would be essentially beneficial to both governments, if an agreement should be made in such manner, that all offenders should be mutually given up by an application to the constituted authorities, on either side of the line, so that all those who may be arrested in their flight, may be brought to justice and adjudged by the laws that they may have offended.

I have, gentlemen, in the crude remarks I have thus offered to your consideration, been governed by a wish and design to be candid; and as it relates to some of the subjects that I have made matter of enquiry in this little investigation, I have done so rather with the view of eliciting the animadversions of abler pens than mine, in the belief that I had neither the time, opportunity or capacity to do justice to them myself; and feeling the full weight of these several inabilities, I have left untouched a great deal of matter in relation to our provincial concerns, that might be spoken of with propriety. Should this little concern not leave me too much in debt to the printer, and should it make its way through the ranks of criticism without being too much disfigured, I may, if leisure admits, appear again to you next winter. With sentiments of respect and esteem,

I am yours, &c.

THE AUTHOR.

AN ADDRESS

To the People of the Province of Lower Canada, on the Importance of Education and the improper use of Distilled Spirits.

FELLOW CITIZENS—

In addressing the foregoing Letters to the Representatives on the civil and political policy of the Province of Lower Canada, I have fulfilled only a part of my original design. What remains is to address you in your individual capacities, on the subject of your interests in this gradually rising Province. That the God of all nature has allotted you a situation for your habitations that in many respects is very eligible, is most certain.—There are some discouragements, it must be admitted. Our climate is cold, and on that account it places the agriculturalist under the necessity of a more permanent provision against the inclemency of our tedious and long winters, than seems necessary in more southern and warmer latitudes.—But we are blessed with a warm and quickly vegetating summer, and for the most part, a rich, prolific and easily cultivated soil; most remarkably well accommodated with navigable waters, which bring our productions with ease and facility to a ready and good market. And on the whole, it may be said that the Province of Lower Canada, for agricultural pursuits, is in its circumstances by no means unfavorable. Her staple commodities of Beef, Pork, Butter, Cheese, and Wheat, places her on a fair footing with most parts of the world for a prosperous competition; and her Lumber and Fur trade, derived from the forest, and her remarkable facilities for navigation and commerce, all promise success to its inhabitants, with the blessings of a benign Providence, and the steady perseverance of its inhabitants of various denominations in industrious habits—the power we have of appointing our own Lawgivers,—the unanimity of the public councils now existing,—under the protection of a powerful nation, that seems disposed to extend her fostering care over our interests without mingling in her councils any act of oppression hostile to them, are circumstances which we ought to appreciate with pride and gratitude. With this view of the subject I am about to give you my advice; and will endeavor to point out what, in my apprehension, will most essentially conduce to promote and render permanent your title to the blessings just recited, & will elevate your provincial character with a gradual, sure and progressive improvement. In my observations to you I will divide the subject into three heads—the general promotion of education—the improve- of your natural commercial advantages and habits in agricultural pursuits—and lastly, a fixed determination to promote temperance and sobriety, with regular religious institutions in the land.

As an integral part of a government which is as free in its principles and institutions as perhaps any other government in the world, not even the government of the United States excepted, it is very necessary for the purpose of advancing and securing those privileges, that the people be well informed; information and virtue are the basis of all free government. I shall divide my observations on the subject of education into three distinct heads. 1st, As it conduces to the better and more permanent security of your rights & privileges in a political point of view. 2d, As it operates to ameliorate your condition & enhance your happiness as citizens, neighbors, &

in the family circle. And lastly, as it operates on your moral and religious character.

I have said above, that the government and constitution of Great Britain, of which the government of Lower Canada is an appendage, is as free and independant as any other government whatever. This proposition I believe to be true as it relates to her constitution and laws. But I do not mean to say, for I certainly do believe, that her institutions and laws are trampled on & abused oftener and more extensively than in some other governments. The patronage of the crown & high officers of government in the different departments—the immense private fortunes of individuals—large landed estates—and last of all her public burdens and extravagant taxes on all articles of consumption, are all tending to, and no doubt do, very frequently, in practice, defeat that perfect security that her constitution and laws, simply considered as such were calculated to establish. But in this country, we have the advantage of some of the laws of Great Britain and many of our own, & have the power of amending such as require it; neither are we incumbered therefore to that extent, with those obstacles above recited, which have such a powerful tendency to prevent the free & equal administration of the same as in England. It behoves us, therefore, to cherish & improve our advantages in these particulars. And as the surest method to do so, I recommend to you as a people, and particularly the heads of all families, the guardians and legal or natural protectors of all young persons, a uniform and lively attention to the promotion of education. The liberal aid and provision granted by the Legislature at their last session for the erection of school houses and support and maintenance of elementary schools, can be of little use to the community without the hearty and zealous cooperation of the people of the Province in the measure. It would hardly be believed, but it is true nevertheless, that in many places among the English settlements, where there are in a neighbourhood from twenty to thirty children of a proper age to be instructed in the first rudiments of education, although they know they are offered one moity of the means of building a school house, and a fund nearly equal to support a respectable teacher of a school, that no steps are taken to improve those advantages. Where can you find the man, my friends, whose mind is not irradiated by some degree of information, capable of exercising the elective franchise with discretion and propriety? No such thing can reasonably be expected. That there are some eccentric minds that even without the help of early education will burst the bands of ignorance and rise by force of original talent to a standing far different from the common class, I admit; but those learn from nature. Their school books are imprinted on the works of nature and of man about them, in characters that they read and decypher at leisure. This is not the case with the generality of minds.

I will exhort you, therefore, in every section where it is possible for you to raise a number of scholars sufficient for a school to loose no time in establishing the same. You will not only find your account in erecting schools in the first rudiments of literature, but where there are a class of young men and women, I mean boys and girls from twelve years old and upwards, who have got forward in reading, writing, and arithmetic, a little advanced in geography, first receive the newspapers, procure a little library of books in common stock, calculated to instruct, to establish the morals, and at the same fix the attention and create a taste for reading. A society

formed under a few simple regulations, by paying one dollar each, will purchase the means of much knowledge and information. These few books in a neighborhood as joint stock, and read by the whole in rotation, and conversed on when together, will at once create a spirit of inquiry that will rapidly extend its influence and become important in leading youth of both sexes to thirst after knowledge.

There is a certain point at which the minds of youth must arrive in their progress in literary pursuits, before their views are sufficiently expanded to thirst after learning. When they arrive at that point, unless it be some dull and indolent subject, the difficulty is over; there is no occasion for drilling or compulsion; give them the means of improvement and the work goes on of its own accord.

You will not mistake me, my friends; I am not expecting to make all your sons and daughters professional men or women, who will shine in the literary world as authors, &c. I want you to qualify them by a decent and respectable education to become respectable members of Society, understanding well the common and necessary method of transacting their common business, to read and understand the common and current news and politics of the day, and above all the Sacred Scriptures, with taste enough to be desirous of employing a portion of that leisure which almost all persons employed in agricultural or mechanical pursuits have, in the cultivation of their minds. How much more respectable and useful it would look, for a society of young men to be employed in reading a portion of the history of their country, studying its geography, or any other branch of common literary pursuit, of a long winter evening, than passing their time perhaps at the tavern, at a game of hazard, or any other worse than useless employment. The employment and exercise of the mind, my friends, at intervals of rest and refreshment of the body, is the surest and most effectual method of giving full effect to that rest and refreshment. Thus a young man who is employed in husbandry, while resting himself and his beasts in the middle of a long summer's day, by taking a book and reading for two hours, or as the case may be, will rise to his labor with more spirit and energy, and better qualified to pursue his business, than if he had lounged two hours on a bed of down; and the ideas he has collected will afford an agreeable reflection while plodding after his plough. I can assure you that I have been acquainted with many valuable men, who have had no education only at a common school, and what they have derived from books in the casual intervals of a busy life employed in agricultural pursuits, who would have done honor to the senate house, or almost any other public situation.

In pursuing this subject it cannot but be obvious that a good common education is absolutely necessary for every person in society, as a qualification to exercise with judgment his rights as a freeman. Living under a government where we are allowed the elective franchise, it is necessary to qualify us to judge of the conduct of public men and public measures; whether those measures are the best calculated for the interest of the country or not. Because in every free government, founded on principles and laws, whether depending on written constitutions or on customs and rules long established; whether the administration of the government be vested in a king, a president, a governor, or by whatever name he be called, public opinion must and ever will give such an impulse to its operations, as no oth-

er principle or power in such state can long withstand. It is therefore highly necessary that public opinion be judiciously correct; this will ever be the case with an enlightened people. It is education and virtue that will preserve an oppressed nation, that will elevate her character and sustain her honor, her rights and privileges, against external encroachments, or internal enemies,—and will at the same time induce her to extend peace, justice and equal rights to all mankind.

In a social point of view how necessary is education! Take it into consideration in its various stages and degrees, and it must be admitted to be the basis of human happiness. It is true that all classes in any society are not expected to, nor is it practicable that they should attain, that high degree of learning or refinement which an exclusive attention to literary pursuits alone will produce. But by diligence and attention, enough may be obtained by almost all classes to stamp with a new deportment the character, conduct and manners of the individual possessing its advantages. The rough and protuberant qualities of the human character are obliterated by its influence; it promotes cheerfulness and civility; qualifies its subjects to maintain rational and interesting conversation; and finally, in the social or family circle promotes kindness and affection, politeness and good humour.

How essential is education in the promotion and perfection of religious character! It requires little argument to prove that education is essential in preparing the human mind for any high attainment in religious life. It is not the intention of the writer to assert that a very ignorant person cannot be the subject of Christian impressions, or that such persons may not cultivate the Christian virtues to an extent that may be necessary to their future well being in the world to come; but that education and improvement of mind will enable any person to relish, in a much higher degree, the sublime doctrines of our holy religion than can possibly be obtained without these advantages. Where is the person to be found in a state of ignorance capable of justly arppreciating the merits of St. Paul's eloquent and sublime address and defence of himself before the Roman Governor.

On the whole survey of the subject, my friends, you cannot but be satisfied that it is your duty to attend to this all important subject; not only to think of it as important, but to act with energy, and not to rest until you have began to fulfil your duty by establishing a good school in each neigborhood where it is practicable, and if not, are you possibly able to hire pritvate tutors? do so, or send your children from home, for those advantages.

In improving your natural advantages for agriculture and commerce, much may be done, if a proper spirit of enterprize should by any means attach itself to the population of Canada. It can hardly be expected that the most liberal exertions of the government, with the circumscribed means it possesses, will readily effect such an improvement in the internal communications of the country, as is most necessary, without the exertions of the people, and particularly of the mercantile part of community. If a due proportion of the capital of the monied interest of Canada were employed in opening important roads and canals, under reasonable and proper encouragement from the government, I believe that the profits of that capital would soon be realized to its owners, and much advantage accrue to other parts of the population.

When we consider the relative situation of this Province as connected with Great Britain, that its trade with that commercial country, from mo-

tives of preference, is in great measure free from the exactions levied on the produce of other nations; I say, when we view the subject properly, it ought to stimulate our exertions to improve every natural advantage we have, to enable us to derive all the benefit that these circumstances are calculated to confer.

I would direct the attention of the people and government of Canada to our neighbors in the state of New York, for a pattern in relation to internal improvements. Let the public pulse beat as it has done there, let the proportionate means and energies of Canada be directed as they have been there, and a very few years will produce such an alteration in our conveniencies of inland transportation, that we should have no reason to complain on this head. I will observe that a diligent and enlightened attention to our agricultural improvements, and the present probability that ere many years elapse we shall be relieved from many privations and inconveniencies we have laboured under, with industry, economy and temperance, we may with confidence look forward to such a state of things, as may reasonably be supposed to place this colony in a very respectable station, in all those particulars in which the happiness and welfare of commonwealths are supposed to exist.

The improper general use made of distilled spirits, is a subject, my fellow citizens on which I have a few remarks to make. It is a subject, as well as masonry, that is much written upon at the present day, and unquestionably is one (let the latter be as it may) of vital importance to civil society, and cannot too often be brought before the public. Its abuse has destroyed more families, brought more individuals to an untimely grave, and been the means of furnishing more jails with tenants and more gallows with suspended victims, than any other, and perhaps than all other moral evils unitedly. How deplorably is the human character degraded by this vice, from the gentleman and scholar, through every grade of character, to the beggar in the streets. This vice, wherever it is prevalent, stamps with indelible marks its victims with all its deplorable consequences. How many young men of genius and education, calculated to become the ornament of private life, to shine and be useful in their country's employment, have sacrificed all their bright prospects on the altar of intemperance. How many others less distinguished, who would, had this vice not overtaken them, been judicious, good members of society, and formed a portion of its strength and stability, either dwindled into sots and died unlamented at an early age, or maddened with the effects or the consequences of this overwhelming vice, committed crimes for which their lives have paid the forfeit to the offended laws of their country. Is there a decent person in civil life, when he sees the drunkard reeling from his cups, unmaned, and every mark of the beast about him; loss of speech, loss of motion, the muscles and nerves failing to do their accustomed duty, perhaps wallowing in the mire, no perceptible powers remaining, unless it be the faint symptoms of a quarrelsome and perturbed spirit----I say is there any decent person but will shudder at consequences so perfectly deplorable, and feel that themselves would never be so degraded—yet a short time elapses and themselves often are victims to the same fell destroyer of human happiness. The general philanthropy of the present age, however, is making an effort to remedy the evil. Much is written, and much done on the subject; and it is believed by the writer that considerable progress has been made, particularly in the United States,

towards remedying this evil. The inquiry presents itself, what can be done to remedy so extensive an evil to society? I admit the subject is surrounded with difficulties, most abundantly so, which arise from a variety of circumstances:

1. Interest. That a great proportion of men in every society, where the use of distilled spirits is current and in fashion, are interested, is most true. There are merchants and distillers in abundance, who are making large profits by vending this pernicious poison to the physical and moral powers of the human race. Those persons are frequently men, too, of considerable influence in the world, There is, perhaps, not a more difficult task than to persuade men to act contrary to their own interests; even where reason and conscience forbid the practice, interest too frequently overturns the whole.

2. The votaries to this sin are numerous. Their strong attachment to distilled spirits, their weakness as to abstaining after pretending to form resolutions to that effect, presents another obstacle to all plans of reformation.

3. The wavering, I mean those in the habit of using, but as they say, not abusing, the use of distilled spirits, who plead for what is called its temperate use, and who, in fact, have such a secret friendship for this destroyer of man's best hopes and prospects, present another serious obstacle to the due application of a remedy.

4. The hospitality of many persons in the higher grades of life, although convinced of the propriety of abstinence from this article, fearing that its absence from their sideboards or cupboards will be attributed to a penurious or stingy spirit, will keep pouring down the poison into their friends and visitors.

5. The extensive capitals employed in manufacturing and vending Rum, Brandy and Gin, which will not easily be diverted to other and useful business and speculations, likewise, may be expected to operate powerfully against this design of breaking up or destroying the evil.*

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* I believe it is admitted by the most discerning in the civilized world, and particularly by the most eminent physicians,

1st. That distilled spirits is a kind of stimulous not well calculated for the human body in any situation, or under any circumstances, unless it be in some solitary cases as a medicine; and in those cases, that there are substitutes.

2d. That the effect of the intemperate use of them is productive either directly or indirectly, of nearly or quite half of the crimes committed in society.

3d. That poverty and disgrace are allotted to a great portion of the world, as a penalty of the improper use of distilled spirits.

4th. The lives of a portion of mankind are sacrificed at an early age by means of its improper use.

5d. That even the moderate, or what is called the temperate use of distilled spirits, is productive of expenses which are worse than thrown away, that in an agregate calculation amount to an enormous sum in almost every government.

If the above statements or propositions be substantially true, and I believe they will not be denied, I will enquire what is the reason that legislative enactments are not resorted to in a case of such moment to individual happi-

In the course of this small work, I have uniformly attempted to point out the remedy for every evil I have suggested, and it is my wish to do so likewise in this; but the subject is surrounded with so many difficulties and obstructions, and the prospect so forlorn and hopeless, that I perceive that the pen of a more persevering moralist than I pretend to be, would probably shrink from its task. Yet, as the only hope, I would earnestly address all classes, more particularly the gentlemen of the country, and request them to pause and reflect sincerely on the circumstances of the province in regard to this evil. It must be principally effected by the conjoint influence of all classes in the country; if the Clergy, Magistrates and public characters, merchants and private gentlemen, would, by a united impulse, use their influence, a reformation might be expected gradually to take place.

Perhaps some new regulations in the laws granting licences to taverns and stores, on the subject of abusing their authority under such licenses, by giving distilled spirits to persons not travellers, in such quantities as to produce intoxication, would be useful.

I have thus, my fellow citizens, given you such material advice on two or three subjects that I think are materially connected with your general welfare. If the counsel is good, and you appreciate it as such, I hope you will derive all the benefit from it that advice, thus publicly given, may be

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ness. There are what is denominated temperate societies, in every direction. The good sense of a great proportion of community is actively engaged in arresting the progress of intemperance. Wherefore is it that this intelligence and good sense has not taken root in some of the Legislatures of the present day, and by an effectual provision of law, do that at once which the good sense of a part of mankind will be long in effecting, viz. stop the progress of this evil. Is there any question of constitutional right to interfere in this subject that produces so general a calamity, any more than any other in which the interest of society is concerned?

Were there some six or seven persons in every town, as many as there are retailers and tavern keepers, to offer for sale any noxious drug, which had the property of producing disease and death when taken into the stomach, and yet so fascinating to the appetite that a great part of mankind would not refrain from using of it, would not legislative bodies immediately stop the vending such poisonous drug under the severest penalties? Most certainly they would. Where, then, are we to look for a distinction of the cases? It most undoubtedly is in the blind attachment a great share of mankind have to old habits and customs, not only of acting but of thinking. Therefore, because Brandy, Rum and Gin have been poisons of so long standing, although their deleterious effects are as sure as that of arsenic or the grave itself—the evil is of so long standing it must be endured. It may be asked, in what way the Legislature could be expected to interfere? I would remark, that in my opinion there might with propriety be either of two things done, viz: to prohibit the use of it entirely after a certain time, and the importation altogether, (unless it was thought necessary to retain it among the list of medicines to be dealt out by learned persons under certain restrictions;) and the other would be to lay such a duty on it that none but the rich could obtain it in quantities to operate as so great an injury as it now does.

susceptible of imparting. In the mean time, you will believe me when I say, that although a stranger to the most of you, you have my hearty good wishes for your prosperity as citizens of a growing province, and as individuals, that your happiness may be promoted by every judicious measure of your own, and the public servants of the country.

I am Fellow-Citizens, yours,

A Citizen and Subject of his Majesty's Province of Lower Canada.

The author, on examining the foregoing pages, after being printed, finds some typographical errors, and he believes there are many errors in the orthography of the manuscript; but as distinction as an author has formed no part of his object in this work, he does not take the trouble to enter into a detail of those errors, inasmuch as he believes they are not so flagrant but that his meaning may be understood. He would likewise notice that in his observations on the practices of the Courts of Justice, he is far from meaning to reflect on the highly respectable Bench of Justices comprising the present Court; as he apprehends that the rules and practices he has animadverted on, have been long in existence. The author would further remark to the public, that if, in any material circumstance he is mistaken in any thing he has said, as soon as he may be apprised of it he will acknowledge the same—as his meaning has been to write with candor and truth.